

**Innovation Partnership Programme**

Dated \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_20[●]

1. [*Full legal name of the RPO*]

and

(2) [*Full legal name of the Company*]

MODEL NON-BINDING term sheet
SETTING OUT THE PRINCIPAL IP TERMS FOR THE Collaboration agreement
REGARDING THE [*INSERT NAME*] PROJECT

NON-BINDING TERM SHEET
SETTING OUT THE PRINCIPAL IP TERMS FOR THE COLLABORATION AGREEMENT REGARDING THE [*INSERT NAME*] PROJECT

**This Non-Binding Term Sheet** dated \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ 20[●] is between:

1. [●] (the “**RPO**”), [an academic institution [incorporated *or* established] under [statute *or* charter in Ireland],] whose [principal address *or* registered office] is at [●]; and
2. [●] (the “**Company**”), [a company incorporated in [•] under registration number [•],] whose [principal place of business *or* registered office] is at [•].

The RPO and the Company together shall be referred to as the “**Parties**”, and individually shall be referred to as a “**Party**”.

1. Purpose

The RPO has applied for funding for a project relating to [*insert a brief description*] (the “**Project**”) from Enterprise Ireland under the Innovation Partnership Programme. If Enterprise Ireland awards the funding for the Project, the Parties intend to enter into an agreement to set out the terms under which they would collaborate on the Project (the “**Collaboration Agreement**”). The purpose of this Non-Binding Term Sheet is to summarise the main intellectual property terms that the Parties intend to include in any such Collaboration Agreement. The Parties acknowledge that completion of this Non-Binding Term Sheet is a pre-requisite for EI to approve release of funding.

1. Provisions envisaged for the Collaboration Agreement

The Parties intend that the Collaboration Agreement would contain intellectual property terms based on the following principles:

|  |  |
| --- | --- |
| Intellectual Property | The definition of the term “Intellectual Property” would be based on the following wording: “All patents, utility models, registered designs, unregistered design rights, copyrights, database rights, rights in respect of confidential information, rights in respect of know-how, and all applications for, and all rights to apply for, any of the foregoing registered property rights, and all similar or analogous rights in any part of the world”.  |
| Background IP | The definition of the term “Background IP” would be based on the following wording: “Any Intellectual Property that is owned or controlled by a Party and that is used in the course of undertaking the Project, but excluding any Project IP. For the avoidance of doubt, (a) the RPO’s Background IP would include [*insert a description of any specific items of IP to be included in the definition*], and (b) the Company’s Background IP would include [*insert a description of any specific items of IP to be included in the definition*]”.  |
| Ownership of Background IP | Nothing in the Collaboration Agreement would affect (a) the RPO’s ownership of the RPO’s Background IP, or (b) the Company’s ownership of the Company’s Background IP. |
| Licences to Background IP for the Project  | Each Party would grant the other Party a royalty-free, fully paid-up, non-transferable, non-sub-licensable and non-exclusive licence under its Background IP for the sole purpose of undertaking the Project.  |
| Licences to Background IP for commercialisation of Project IP | To the extent that the exploitation of any Project IP owned by a Party (the “Exploiting Party”) depended on the use of the other Party’s Background IP, such other Party would, subject to any existing third-party obligations, grant to the Exploiting Party a non-exclusive licence to that Background IP on fair and reasonable terms to be agreed in writing by the Parties. |
| Project IP | The definition of the term “Project IP” would be based on the following wording: “Any Intellectual Property that is generated in the course of undertaking the Project, whether by a Party alone or by the Parties together.” |
| Significant Company Background IP | The definition of the term “Significant Company Background IP” would be based on the following wording: “Any of the Company’s Background IP that is either (a) the subject of one or more granted patents, or (b) essential to the Project, such that the Project would be difficult or impossible to carry out without access to it. Notwithstanding the preceding sentence, no know-how or data would constitute Significant Company Background IP.” |
| Non-Severable Improvement | The definition of the term “Non-Severable Improvement” would be based on the following wording: “Any Project IP that (a) is created using Significant Company Background IP, and (b) cannot be exploited without infringing such Significant Company Background IP. Notwithstanding the preceding sentence, no Project IP that is know-how or that protects a Research Tool or an Enabling Technology (both to be defined in the Collaboration Agreement) would be considered a Non-Severable Improvement”. |
| Ownership of Project IP | The RPO would own all Project IP, irrespective of which Party generated the Project IP. If any of the Project IP falls within the definition of a Non-Severable Improvement, the Company may request assignment of the Non-Severable Improvement on fair and reasonable terms to be agreed by the Parties in writing and provided that such assignment would not be contrary to any applicable state aid, technology transfer or other rule or any governmental policy consideration.  |
| Disclosure of Project IP | Each Party would promptly and fully disclose to the other Party all Project IP that it generates in the course of undertaking the Project. |
| Option | The RPO would grant the Company an option to negotiate a licence under the Project IP, having regard to the indicative licence terms set out below.  |
| Indicative licence terms[[1]](#footnote-1) | The terms of any such licence would be fair and reasonable, should not be contrary to any applicable state aid, technology transfer or other rule or any governmental policy consideration, and would include the following indicative terms: Indicative Terms Table

|  |  |  |
| --- | --- | --- |
| 1 | Type of licence: | [Exclusive / Non-Exclusive / Sole] |
| 2 | Field: | [*Insert*] |
| 3 | Territory: | [*Insert*] |
| 4 | Sub-licensing: | [Yes / No] |
| 5 | Upfront fee: | [Yes / No] |
| 6 | Milestone payments: | [Yes / No] |
| 7 | Royalty payments: | [Yes / No] |
| 8 | Reimbursement of IP protection & enforcement costs: | [Yes / No] |
| 9 | Commercialisation: | [The Company would use Diligent and Reasonable Efforts (to be defined in the licence agreement) to develop and commercially exploit the Project IP. In addition, the Company would submit annual statements to the RPO outlining (amongst other things) the activities taken and planned to be taken.]  |
| 10 | Start date: | [*Insert*] |
| 11 | Duration: | [*Insert*] |
| 12 | RPO termination rights: | [*Insert*] |
| 13 | Other key terms:  | [*Insert*] |

 |
| Exercise of the option | If the Company wished to exercise the option it would give the RPO written notice within a period of [*insert*] [months] from the date on which the Project Period (to be defined in the Collaboration Agreement) comes to an end. If the RPO received the notice within such period, the Parties would negotiate the terms of the licence agreement for a period not to exceed [*insert*] [days]. If the Parties agreed the terms during such [*insert*]-[day] period, the Parties would execute a separate, written licence agreement on such terms. For the avoidance of doubt, any such licence agreement (if agreed) would be in writing and signed by authorised representatives of each Party.  |
| Reservation of rights | The RPO would at all times retain at least the right to use all Project IP for research, teaching and publication purposes. |
| Publication | The RPO would at all times be free to present and publish the Project IP, subject to the Company having a right to review the presentation or publication in advance and to request a delay to permit a patent application to be filed for the Project IP disclosed in the presentation or publication and/or to require the deletion of any of the Company’s pre-existing Confidential Information (to be defined in the Collaboration Agreement) from the presentation or publication.  |

1. Areas still to be discussed

The Parties envisage that the Collaboration Agreement may also include other terms, which may include, without limitation, [•].

1. Confidentiality

*EITHER:* [Each of the Parties acknowledges that during the negotiation of the Collaboration Agreement it may receive Confidential Information from the other Party. “**Confidential Information**” shall mean any information which, if in writing, is marked as confidential or which, if not in writing, is otherwise characterised as confidential at the time of disclosure. Each of the Parties agrees that it will:

* 1. use the Confidential Information only for the purpose of negotiating the Collaboration Agreement and not for any other purpose; and
	2. keep the Confidential Information confidential and not directly or indirectly disclose it or make it available to any third party.

This obligation shall not apply to information which is or subsequently becomes publicly known through no act or omission of the Party that receives it.]

*OR:* [It is agreed that the confidentiality of the Parties’ confidential information that may be disclosed by one Party to the other during the negotiation of the Collaboration Agreement will be maintained in accordance with the Confidentiality Agreement signed by the Parties on [*insert date*].]

1. Law and status of this Term Sheet

Except for the provisions of Clauses 4, 5 and 6 which the Parties intend to be binding obligations, this Term Sheet is not intended to create, evidence or imply any legal relationship or contract between the Parties. Each Party acknowledges and agrees that (a) either Party may withdraw from the negotiation of the Collaboration Agreement at any time without liability, and (b) the negotiations are being conducted on a non-exclusive basis, unless and to the extent otherwise stated in this Term Sheet. To the extent that any legal issue arises in connection with this Term Sheet, it will be governed and construed in accordance with the laws of Ireland.

1. Costs

Each Party shall bear its own legal and other costs in connection with the negotiation and preparation of this Term Sheet and any subsequent agreement.

**The Parties record their understanding of the above by signing below:**

|  |  |
| --- | --- |
| For and on behalf of | For and on behalf of |
| [*Full legal name of the RPO*] | [*Full legal name of the Company*] |
| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Signed | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Signed |
|  |  |
| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Name | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Name |
|  |  |
| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Title | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Title |
| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Date | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Date |

1. All the sections in the indicative terms table should be completed.

For Term 1, strike through the alternatives that do not apply.

For Terms 4-8, strike through the alternative that does not apply.

Inclusion of “to be negotiated” (or similar) is not acceptable. [↑](#footnote-ref-1)